Copyright. Infringement. Abridgment of Copyrighted Books
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riages between white persons and negroes or persons of more than a stated proportion of African blood.[12] In view of the fact that this legislation is upheld partly in recognition of the peril to race integrity induced by mere propinquity, we see but little difference in the prevention by law of the association of white and colored pupils in the schools of the State and in the prevention of their living side by side in their homes.

G. H. K.

COPYRIGHT — INFRINGEMENT — ABRIDGMENT OF COPYRIGHTED BOOKS—The custom of "cramming" knowledge (predigested and made palatable by tutors) into students too indolent to condense for themselves the prescribed text-books, is widespread. Occasionally, the practice is vigorously condemned by the scholastic authorities, but it is unusual for the matter to meet with judicial disapproval, as occurred in a recent case,[1] in which the following interesting facts were involved: The defendant, a tutor, gave private instructions to students in Harvard University taking a course in economics under a professor who had copyrighted a book, "Principles of Economics," which was published by the plaintiff. The defendant prepared brief outlines of the text-book covering the subjects to be discussed at his next meeting with the students and allowed them to keep the outlines during the intervals between their weekly conferences. It was understood by the students that the outlines were to be returned at the end of the week and were not to be used except in preparation for the conferences. These were destroyed after they had been so used. The defendant also prepared other outlines for use, not at a particular conference dealing with a particular part of the book, but for tutoring in preparation for a final examination in one of the courses in economics. These were intended to outline all the subject matter covered in that course during a certain term, and were given to the students to be kept until immediately before the examination and then returned to the defendant. In some manner, these outlines got into the possession of the plaintiff, who thereupon brought a bill in equity for an injunction to restrain infringement of the copyright. The court held that both forms of outline,—which frequently quoted from the copyrighted book words and sentences likely to catch the attention and remain in the memory, and which treated in an abridged and paraphrased form the topics of the book, although the author's order and arrangement were not always followed,—were in violation of the Copyright Act of 1909,[2] which secures to the owner of a

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[12] Scott v. State, 39 Ga. 321 (1869); State v. Jackson, 80 Mo. 175 (1873).

[1] MacMillan Co. v. King, 223 Fed. Rep. 862 (1914).

[2] Copyright Act of March 4, 1909, Comp. St. 1913, §9519.

copyright in a literary work the exclusive right to "print, reprint, publish, copy and vend the copyrighted work"[3] and "to make any other version thereof"[4] and which also provides that the copyright shall protect "all the copyrightable component parts of the work copyrighted and all matter therein in which copyright is already subsisting."[5] The court excellently summarized the situation as follows:

> "Though the reproduction of the author's ideas and language is incomplete and fragmentary, and frequently presents them in a somewhat distorted form, important portions of them are left substantially recognizable. If they had not been so left, the defendant's evident purpose could not have been accomplished. It seems obvious that what he was trying to give and what his pupils were trying to get, was an acquaintance with the contents of the book, which should resemble as much as possible that acquaintance which they would have obtained for themselves by following with sufficient diligence the university course of instruction for which the book was the appointed text-book. Nor do I see any reason to doubt that these outlines might readily cause the student to think he could meet the minimum requirements without using the book itself."

In conclusion, the court held that the defendant's abridgment constituted "versions" of substantial portions of the book, such as the plaintiff alone had the right to make.

Early English cases[6] adopted as a test of infringement of copyright by abridgment the quantity of the material abstracted. Later English[7] and American[8] cases, decided before the passage of the Act of 1909,[9] held that a substantial condensation of the original work did not constitute a piracy, if intellectual labor and judgment had been required. However, the value of the selections made and the probable effect on the original work were also important factors in determining whether an abridgment was an infringement.[10] Some courts believed the abridgment to be a form of beneficial

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[3] §1a.

[4] §1b.

[5] §3.

[6] Dodsley v. Kinnersley, Amb. 403 (1761).

[7] Hawkworth v. Newbery, Lofft. 775 (1774).

[8] Folsom v. Marsh, 2 Story, 100 (U. S. 1841); Lawrence v. Dana, 4 Cliff. 1 (U. S. 1869).

[9] *Supra*, n. 2.

[10] Gray v. Russell, 1 Story, 11 (U. S. 1839).

advertisement to the author.[11] Others regarded the abridger "rather as a sort of jackal to the public to point out the beauties of authors."[12] The recent English Copyright Act of 1911 failed to reserve to the owner of the copyright the right of abridgment.[13]

The courts have not been frequently called upon to interpret the American Copyright Code of 1909[14] so far as abridgments are concerned. In what appears to be the only case,[15] in which a question similar to that in the principal case has arisen, the court held that if an abridgment goes no further than to "give just enough information to put the reader upon inquiry regarding the contents of the copyrighted book, there was no infringement." In that case, the owner of a copyrighted opera libretto of forty-six pages sought to restrain the publication of a half page synopsis thereof in a book called "Opera Stories." In refusing to grant an injunction, the court said a literal definition of the words "make any other version thereof" "might even lead to the ludicrous result of condemning as an infringer the writer who publishes a laudatory notice of a picture or a poem. The historian who describes the charge of the cuirassiers at Friedland will hardly expect to be sued by the owner of the copyright covering Meissonier's great painting—'1807.' The editor who reports the departure of 'the captains and the kings' and the dispersion of the navy after a celebration will probably be astonished if accused of infringing 'The Recessional.'" Obviously, the principal case presents a much stronger argument for an injunction and the decision therein is clearly in accordance with the requirements of the Act of 1909.[16]

A. L. L.

FEDERAL EMPLOYERS' LIABILITY ACT—WHEN IS AN EMPLOYEE ENGAGED IN INTERSTATE COMMERCE—The federal Employers' Liability Act[1] provides that "any common carrier shall be liable in damages to any person suffering injury while he is employed by such carrier in interstate commerce . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier," thereby effectually removing the common law fellow servant defence available before the passage of the act in question. Consequently the question as to whether or not a par-

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[11] *Supra*, n. 6.

[12] Tinsley v. Lacy, 1 H. and M. 47 (1861).

[13] Copinger on the Law of Copyright, 5th Ed. (1915), p. 158.

[14] *Supra*, n. 2.

[15] G. Ricordi & Co. v. Mason, 201 Fed. Rep. 182-185 (1911-1912); affirmed on appeal, 210 Fed. 277 (1913).

[16] See accord: Bowker on Copyright (1912), p. 80.

[1] Act of Congress of April 22, 1908, 35 U. S. Stat. 65, c. 149.